

Department of Energy

§ 710.8

to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has knowingly taken action which evidences a sympathetic association with the intent of furthering the aims of, or adhering to, and actively participating in, any foreign or domestic organization, association, movement, group, or combination of persons which advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or Laws of the United States or any state or subdivision thereof by unlawful means.

(d) Publicly or privately advocated, or participated in the activities of a group or organization, which has as its goal, revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by

unconstitutional means with the knowledge that it will further those goals.

(e) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States.

(f) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31.

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information.

(h) An illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability.

(i) Refused to testify before a Congressional Committee, Federal or state court, or Federal administrative body, regarding charges relevant to eligibility for DOE, or another Federal agency's access authorization.

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

§ 710.9 Action on derogatory information.

(a) When the reports of investigation of an individual or other reliable information reasonably tend to establish the validity and significance of one or more of the items in the criteria, or of other reliable information or facts which are derogatory, although outside the scope of the stated categories, such information shall be regarded as substantially derogatory and create a question as to the individual's eligibility for access authorization. The Local Director of Security will authorize the conduct of an interview with the individual, or request other appropriate actions, and, on the basis of such interview and/or actions, may authorize the granting or continuation of access authorization. If the question as to the individual's eligibility is not resolved through interview, and/or other actions, which may include a DOE-sponsored mental evaluation, the Local Director of Security will submit the matter to the Manager. If the Manager agrees that unresolved derogatory information is present, and that appropriate attempts to resolve such derogatory information have failed, the Manager shall forward the individual's case to the Director, Office of Safeguards and Security, with a request for authority to conduct an administrative review proceeding. If the Manager believes that the derogatory information has been favorably resolved, the Manager shall direct that the individual be granted access authorization. A decision in the matter shall be rendered by

the Manager within 10 calendar days after receipt. Following the decision of the Manager, the Director, Office of Safeguards and Security, may authorize:

(1) The granting of access authorization,

(2) The institution of administrative review procedures set forth in §§ 710.20 through 710.31, or

(3) Such other action as the Director deems appropriate.

(b) The Director, Office of Safeguards and Security, must authorize one of these options within 30 calendar days of the receipt of the case from the Manager, unless an extension is granted by the Director, Office of Security Affairs.

§ 710.10 Suspension of access authorization.

(a) In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the Local Director of Security may authorize action(s) to resolve the question pursuant to § 710.9. Such action(s) shall be taken on an expedited basis. If the question as to the individual's continued eligibility for access authorization is not resolved in favor of the individual, the Local Director of Security will submit the matter to the Manager with a recommendation that the individual's DOE access authorization be suspended pending the final determination resulting from the operation of the procedures provided in this subpart.

(b) Within two working days of receipt of the recommendation from the Local Director of Security to suspend the individual's DOE access authorization, the Manager shall review the matter and authorize continuation or suspension of access authorization. The access authorization of an individual shall not be suspended except by the direction of the Manager. This authority to suspend access authorization may not be delegated but may be exercised by a person who has been designated in writing as Acting Manager.

(c) Upon suspension of an individual's access authorization pursuant to paragraph (b) of this section, the individual, the individual's employer, any other DOE Operations Office having an